



**NOTICE OF MEETING  
GOVERNING BODY OF MARBLE FALLS, TEXAS  
Tuesday, January 19, 2016 – 6:00 pm**

A quorum of the Marble Falls Economic Development Corporation  
and the Planning & Zoning Commission may be present

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Notice is hereby given that on the 19<sup>th</sup> day of January, 2016 the Marble Falls City Council will meet in regular session at 6:00 pm in the City Hall Council Chambers located at 800 3<sup>rd</sup> Street, Marble Falls, Texas, at which time the following subjects will be discussed:

**1. CALL TO ORDER AND ANNOUNCE QUORUM IS PRESENT**

**2. INVOCATION**

**3. PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES AND TO THE TEXAS FLAG.** *"Honor the Texas Flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible."*

**4. UPDATES, PRESENTATIONS AND RECOGNITIONS**

**5. CITIZEN COMMENTS.** *This is an opportunity for citizens to address the City Council concerning an issue of community interest that is not on the agenda. Comments on a specific agenda item must be made when the agenda item comes before the Council. The Mayor may place a time limit on all comments. Any deliberation of an issue raised during Citizen Comments is limited to a proposal to place it on the agenda for a later meeting.*

**6. CONSENT AGENDA.** *The items listed are considered to be routine and non-controversial by the Council and will be approved by one motion. There will be no separate discussion of these items unless a Councilmember so requests, in which case the item will be removed from the Consent Agenda prior to a motion and vote. The item will be considered in its normal sequence on the Regular Agenda.*

(a) Approval of the [minutes](#) of the January 5, 2016 regular meeting. **Christina McDonald, City Secretary**

(b) Approval of a [Park Concession Agreement](#) between the City of Marble Falls and Jane Dean for the purpose of dance lessons at the Westside Park Community Hall. **Robert Moss, Parks and Recreation Director**

- (c) Approval of a [Park Concession Agreement between](#) the City of Marble Falls and Raymond Weeks for the purpose of karate lessons at the Westside Park Community Hall. **Robert Moss, Parks and Recreation Director**

**7. REGULAR AGENDA.** Council will individually consider and possibly take action on any or all of the following items:

- (a) Discussion and Action on the Second Reading of [Ordinance 2016-O-01A](#) amending the Code of Ordinances of the City of Marble Falls Chapter 15 (Parks and Recreation), Article IV (Lakeside Pavilion), Section 15-86 (Definitions), Section 15-90 (License Fees), Section 15-91 (City's right to refuse rent), proposed Section 15-93.5 (No Smoking), and Section 15-97 (Pavilion Basic Services). **Robert Moss, Parks and Recreation Director**
- (b) Discussion and Action regarding the contract award for the [Avenue N Realignment Project](#). **Eric Belaj, City Engineer**

**8. CITY MANAGER'S REPORT**

- Development Buzz

**9. EXECUTIVE SESSION**

CLOSE OPEN SESSION AND CONVENE EXECUTIVE SESSION Pursuant to §551.071 (*Private Consultation between the Council and its Attorney*), Pursuant to §551.072 (*Deliberation Regarding the Purchase, Exchange, Lease or Value of Real Property*) and Pursuant to §551.087 (*Deliberation Regarding Economic Development Negotiations*) of the Open Meetings Act. Tex. Gov't Code, Council will meet in Executive Session to discuss the following:

- Discuss economic development projects associated with development of EDC owned and City owned property, including public right-of-way and easements.

**10. RECONVENE INTO OPEN SESSION FOR POSSIBLE ACTION RESULTING FROM ITEMS DISCUSSED IN EXECUTIVE SESSION**

**11. ANNOUNCEMENTS AND FUTURE AGENDA ITEMS**

**12. ADJOURNMENT**

*"The City Council reserves the right to adjourn into Executive Session at any time during the course of this meeting to discuss any matters listed on the agenda, as authorized by the Texas Government Code, including, but not limited to, Sections 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices), 551.087 (Economic Development), 418.183 (Deliberations about Homeland Security Issues) and as authorized by the Texas Tax Code, including, but not limited to, Section 321.3022 (Sales Tax Information)."*

*In compliance with the Americans with Disabilities Act, the City of Marble Falls will provide for reasonable accommodations for persons attending City Council Meetings. To better serve you, requests should be*

received 24 hours prior to the meeting. Please contact Ms. Christina McDonald, City Secretary at (830) 693-3615.

**Certificate of Posting**

I, Christina McDonald, City Secretary for the City of Marble Falls, Texas, do certify that this Notice of Meeting was posting at City Hall, in a place readily accessible to the general public at all times, on the 14<sup>th</sup> day of January 2016 at 2:15 pm and remained so posted for at least 72 continuous hours preceding the scheduled time of said meeting.

/s/ Christina McDonald  
Christina McDonald, TRMC  
City Secretary

The agenda is also posted on the City's web site [www.ci.marble-falls.tx.us](http://www.ci.marble-falls.tx.us).

**January 19, 2016**

**6. CONSENT AGENDA**

- (a) Approval of the minutes of the January 5, 2016 regular meeting. ***Christina McDonald, City Secretary***
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Background information is attached as follows:

[January 5, 2016 regular meeting minutes](#)

STATE OF TEXAS  
COUNTY OF BURNET  
CITY OF MARBLE FALLS

On this the 5<sup>th</sup> day of January, 2016 the Council of the City of Marble Falls convened in regular session at 6:00 pm at the City Hall Council Chambers located at 800 Third Street, Marble Falls, Texas, with notice of meeting giving time, place, date, and subject having been posted as described in Chapter 551 of the Texas Government Code.

**PRESENT:**

John Packer	Mayor
Jane Marie Hurst	Mayor Pro-Tem
Rachel Austin-Cook	Councilmember
Richard Lewis	Councilmember
Ryan Nash	Councilmember
Reed Norman	Councilmember
Richard Westerman	Councilmember

**ABSENT:**

None

**STAFF:**

Mike Hodge	City Manager
Patty Akers	City Attorney
Christina McDonald	City Secretary
Mark Whitacre	Police Chief
Johnny Caraway	Fire Chief
Caleb Kraenzel	Director of Development Services
Mike Ingalsbe	Building Official
Christian Fletcher	EDC Executive Director
Robert Moss	Parks and Recreation Director

**VISITORS:** Glynis Smith (The Highlander), Mark Mayfield and Judy Miller (EDC), Mary Ann Raesener (Mayor, City of Meadowlakes), Monte Akers (EDC Attorney), Billy Wall (Burnet County Precinct 3 Commissioner Candidate), Ted Burget, Marcus Horner, Bill Smyrl, JC Cauthen Trevor Court and Sandy Boulter (Highland Lakes Farmers Market), Andi Ball (Congressman Roger Williams),

1. **CALL TO ORDER AND ANNOUNCE QUORUM IS PRESENT.** Mayor Packer called the meeting to order and announced the presence of a quorum.
2. **INVOCATION.** Councilmember Norman gave the invocation.
3. **PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES AND TO THE TEXAS FLAG.** Councilmember Austin-Cook led the pledges.

4. **UPDATES, PRESENTATIONS AND RECOGNITIONS.** There were no updates, presentations or recognitions.

5. **CITIZEN COMMENTS.** Billy Wall (Burnet County Precinct 3 Commissioner Candidate) introduced himself to Council and those present.

6. **CONSENT AGENDA.**

(a) **Approval of the minutes of the December 1, 2015 regular meeting.**

(b) **Approval of a Community Event Fund Application for Seasonal Lighting Displays.**

(c) **Approval of a Park Concession Agreement between the City of Marble Falls ('City') and Rodgers Family Enterprises, LLC D/B/A Jolly Rodgers ('Concessioner') for the purposes of renting paddle boards, paddle boats, kayaks and park-related retail products.**

(d) **Approval of a Park Concession Agreement between the City of Marble Falls ('City') and The Highland Lakes Farmers Market, a 501(c)(6) organization ('Concessioner') for the purpose of holding a farmers market each Saturday in Falls Creek Park.**

Mayor Pro-Tem Hurst made a motion to approve the consent agenda. Councilmember Westerman seconded the motion. The motion carried by a unanimous vote.

7. **REGULAR AGENDA.**

(a) **Public Hearing, Discussion and First Reading of Ordinance 2016-O-01A amending the Code of Ordinances of the City of Marble Falls Chapter 15 (Parks and Recreation), Article IV (Lakeside Pavilion), Section 15-86 (Definitions), Section 15-90 (License Fees), Section 15-91 (City's right to refuse rent), proposed Section 15-93.5 (No Smoking), and Section 15-97 (Pavilion Basic Services).** Mayor Packer opened the public hearing. Robert Moss, Parks and Recreation Director addressed Council. There being no further discussion, Mayor Packer closed the public hearing and read the caption of the ordinance. No action was taken. First reading only.

(b) **Public Hearing, Discussion, and Action Regarding a Construction Plat for Panther Hollow Subdivision, being a 12.63 acre subdivision and 3.9 acres of dedicated right-of-way out of the Guadalupe Flores Survey No. 7, Abstract No. 304, and C&M Railroad Survey No. 4, Abstract No. 1270, City of Marble Falls, Burnet County, Texas, and Subdivision Regulation waiver/suspension requests pertaining to the proposed development.** Mayor Pro-Tem Hurst recused herself due to a conflict of interest. Mayor Packer opened the public hearing. Caleb Kraenzel, Director of Development Services addressed Council. There being no further discussion, Mayor Packer closed the public hearing. Councilmember Lewis made a motion to approve the construction plat and associated waivers/suspension subject to the following conditions:

1. Geotechnical report be submitted and construction plans be updated with final revisions and based on findings of geotechnical report, subject to approval by the City Engineer.
2. That the continuation of Corazon Drive as a public street is approved as an option subject to submittal and approval of design by City Engineer, and approval and permitting by the Texas Department of Transportation.
3. That the Nature Trail alternative in lieu of a standard sidewalk be allowed as depicted at the City standard required minimum width of then (10) feet wide.
4. The Planning and Zoning Commission finds that based on the aforementioned performance of the development to construct sidewalks and the span of roadway construction, in with the remaining acres to be platted, render this situation unique and therefore substantiate the approval of a waiver/suspension allowing for deferment of sidewalk construction on the south side of Panther Hollow Drive and east side of Corazon Drive until the development and/or platting occurs on the remaining acres or a portion thereof of unplatted area, at such point the sidewalk shall be constructed across the proposed site/lot (phase/sub-phase) and connect back to the sidewalks constructed within this phase of platting.

Councilmember Norman seconded the motion. The construction plat was approved by a vote of 6-0.

8. **CITY MANAGER'S REPORT.** There was no report
9. **EXECUTIVE SESSION with the Marble Falls Economic Development Corporation**  
**CLOSE OPEN SESSION AND CONVENE EXECUTIVE SESSION Pursuant to §551.071**  
***(Private Consultation between the Council and its Attorney)* and Pursuant to §551.072**  
***(Deliberation Regarding the Purchase, Exchange, Lease or Value of Real Property)* of**  
**the Open Meetings Act. Tex. Gov't Code, Council will meet in Executive Session to**  
**discuss the following:**
  - Discuss economic development projects associated with development of EDC owned and City owned property, including public right-of-way and easements.

6:52 pm Convened to Executive Session

7:43 pm Returned to Open Session

10. **RECONVENE INTO OPEN SESSION FOR POSSIBLE ACTION RESULTING FROM ITEMS DISCUSSED IN EXECUTIVE SESSION.** No action was taken.

11. **ANNOUNCEMENTS AND FUTURE AGENDA ITEMS.** The January 19 draft agenda was reviewed.

**12. ADJOURNMENT.** There being no further business to discuss, Mayor Pro-Tem Hurst made a motion to adjourn. Councilmember Lewis seconded the motion. The meeting was adjourned at 7:50 pm.

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**John Packer, Mayor**

**ATTEST:**

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**Christina McDonald, TRMC  
City Secretary**

DRAFT



**January 19, 2016**

**6. CONSENT AGENDA**

- (b) Approval of a Park Concession Agreement between the City of Marble Falls and Jane Dean for the purpose of dance lessons at the Westside Park Community Hall. ***Robert Moss, Parks and Recreation Director***

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Background information is attached as follows:

[Cover Memo and Supporting Documentation](#)



**City of Marble Falls, Texas  
Council Agenda Item Cover Memo  
January 19, 2016**

**Agenda Item: 6(b)**

**Prepared By: Robert W. Moss, Parks and Recreation Director**

**Department: Parks and Recreation**

**Submitted By: Robert W. Moss, Parks and Recreation Director**

**AGENDA CAPTION**

Approval of a Park Concession Agreement between the City of Marble Falls and Jane Dean for the purpose of dance lessons at the Westside Park Community Hall.

**BACKGROUND**

Jane Dean wishes to use the Westside Park Community Hall primarily on Tuesday evenings from 4pm to 8pm (occasionally on other days based on availability) solely for the purpose of Dance Classes. This Agreement will be for a trial period of three (3) months. The Agreement may be renewed after the trial period for a full one-year term. The Park Concession Agreement specifies that 15% of the dance instruction fees will be paid to the City on a monthly basis.

THE STATE OF TEXAS     §  
COUNTY OF BURNET     §

**CONCESSION AGREEMENT BETWEEN  
THE CITY OF MARBLE FALLS, TEXAS  
AND JANE DEAN**

The **City of Marble Falls**, a duly incorporated Texas home-rule municipal corporation, ("City"), and Jane Dean ("Concessioner"), enter into this Concession Agreement ("Agreement") on January 19, 2016, upon the terms and conditions set forth below:

**1. Premises.** The City grants Concessioner the right to use the Westside Park Community Hall, ("Licensed Property").

The City makes this grant solely to the extent of its right, title and interest in the Licensed Property, without any express or implied warranties.

**2. Purpose.** The City grants Concessioner permission to use the Licensed Property primarily on Tuesday evenings (occasionally on other days based on availability) solely for the purpose of Dance Classes.

**3. Consideration.** Concessioner agrees to pay the City 15% of gross receipts for the term of this Agreement.

If the City causes damage to or destruction of Concessioner's Improvements or Property, Concessioner covenants not to sue the City, or pursue other remedies against the City to recover costs of repairing or replacing the Improvements or Property, as additional consideration for being granted this Agreement.

Payments collected and related documentation for all sales shall be due monthly. Concessioner will provide documentation to the City that describes the type and dates of sales originating from the Licensed Property on or before the 15<sup>th</sup> day of the month following the month the sales occurred. The City auditor, or duly authorized representative of the City, shall, for the purpose of audit and examination, have access to records and other books, documents, and papers of the Concessioner pertinent to the contract. The City may, upon reasonable notice to concessioner, conduct an audit of concessioner's records to verify that Concession Fees have been properly paid and that charges to the public by the Concessioner have been properly charged and received.

**4. Term.** This Agreement shall commence on the execution date and shall continue in full force and effect for a **trial** period ending April 30, 2016; provided that the Licensed Property is used solely for the purposes set out in Section 2 Purpose. This Agreement may be renewed by the City Council for additional terms.

**5. Limits on License.** The existence of this Agreement is expressly subordinate to the present and future right of the City to use this property in any manner authorized by law. This Agreement is also subordinate to any easements, utility easements, rights of way, use

agreements, park reservation permits issued by the city staff, licenses or other property interests recorded and associated with the property.

The City may enter the Licensed Property without giving notice and without incurring any obligation to Concessioner and remove the Improvements or any alteration thereof. Such removal will occur only if the City Manager deems it is necessary: (a) in order to exercise the City's rights or duties with respect to the Licensed Property; (b) to protect persons or property; or (c) for the public health or safety with respect to the Licensed Property.

## **6. Conditions.**

**A. Use of the Licensed Property.** Concessioner shall use the Licensed Property solely for the purposes listed in Section 2 Purpose. Concessioner is responsible for cleaning the Licensed Property after each use; and, any damage noted after each use. It is Concession responsibility to report any damage to the Licensed Property noted upon entering and prior to use.

**B. Improvements or Alteration of Property.** Concessioner shall not construct or locate any other structures or improvements on the property without the prior written permission of the City Manager. Concessioner shall not remove or alter any improvement, soil or other material on the property without the prior written consent of the City Manager. Concessioner shall be responsible for repairs to the property or its improvements if damage is caused to such property or improvements. All improvements and/or alterations must comply with the city's current ordinances and regulations and must pass all applicable inspections.

**C. Remove or Modify Improvements.** If Concessioner is granted written authority to construct or locate a structure or improvement on the property, Concessioner may be required at its own cost to remove the structure or improvement, at the option of the City upon termination of this License, or prior to termination upon a determination by the City Manager that the structure or improvement needs to be removed or modified because the structure or improvement is a hazard to persons or property, that the structure or improvement prevents the City from using the property for a lawful purpose or because the structure or improvement does not comply with federal, state or local ordinances or this License. All improvements must meet the City's ordinances and be compliant with the Americans with Disabilities Act. All improvements and/or alterations must comply with the city's current ordinances and regulations and must pass all applicable inspections.

**D. Maintenance.** Concessioner shall maintain the Licensed Property by keeping the immediate area around the Improvements free of debris and litter on an ongoing basis. Further, Concessioner must timely and properly maintain the Improvements, if any.

**E. Activities.** Concessioner will not conduct any activities, events, or operate the Licensed Property in a manner that would violate any city ordinance or cause the City to be in violation of any federal, state or local laws, deed restrictions, covenants or easements in effect for the property.

**F. Signage.** Concessioner shall post and maintain a clearly readable sign, of a format, context, and material approved by the City, in a clearly visible location that shows the days/times of Licensed Property usage for purpose defined in Section 2.

**G. Insurance.** Concessioner shall be required to maintain in effect Comprehensive General Liability insurance covering claims for personal injury, death or damage to property to the limit of not less than one-million dollars (\$1,000,000.00) per occurrence.

**The city will be named as an additional insured** on such policy. A thirty (30) day notice of cancellation endorsement in favor of the City of Marble Falls must also be provided. Required coverage may be provided in the form of a rider and/or endorsement to a previously existing insurance policy. The insurance must cover all perils arising from the activities of concessioner, its employees, agents, contractors, and invitees, related to concessioner's use of the park land or facilities covered in the concession. Concessioner shall be responsible for the payment of any deductibles stated in the policy.

**H. Health Permits.** Concessioner shall be required to possess, in good standing, all necessary health permits required for prepared food service in the State of Texas.

**7. Indemnification.** To the extent permitted by applicable law, Concessioner hereby agrees to indemnify, save, and hold harmless the City of Marble Falls, its officers, employees, agents, and Concessioners (collectively called "Indemnitees") against any and all liability, damage, loss, claims, causes of action, expenses or demands (collectively "Costs") of any nature whatsoever, on account of personal injury (including without limitation, Workers' Compensation and death claims), or property loss or damage of any kind whatsoever, which arises, or is claimed to arise, out of or is, or is claimed to be, in any manner connected with, construction, installation, existence, operation, use, maintenance, repair, restoration, or removal of the Improvements on the Licensed Property pursuant to this License. Concessioner must, at its own expense, investigate all those claims and demands, attend to their settlement or other disposition, defend all actions based thereon using counsel satisfactory to Indemnitees' City Attorney, and pay all other Costs and expenses of any kind arising from any of the aforesaid claims, demands or causes of action.

**8. Termination.**

**A. Termination by Notice.** Either party may terminate this Agreement by delivering written notice of termination to the other party not later than thirty (30) days before the effective date of termination. In the event that the Concessioner is the terminating party, Concessioner shall deliver the required thirty (30) day notice of termination to the City Manager.

**B. Termination by Abandonment.** If Concessioner abandons or fails to comply with the terms of the Concession Agreement, and the ~~City Manager~~ receives no substantive response within thirty (30) days following written notification to concessioner, then the City (through action by the City Manager) may terminate the Concession Agreement and remove and/or replace any improvements, equipment or inventory at its option and located on City park land or within City facilities. All of Concessioner's improvements, equipment or inventory located on City park land or within City facilities after the date that a Concession Agreement expires or is terminated shall be deemed property of the City.

**C. Termination by Default.** In the event that Concessioner fails to make timely payments to the City or fails to comply with the terms and conditions of this Agreement, City may revoke Concessioner's License and terminate this Agreement.

**9. Venue.** Venue for all lawsuits concerning this Agreement must be in the State District Courts of Burnet County, Texas.

**10. Waiver of Default.** Either party may waive any default of the other at any time, without affecting or impairing any right arising from any subsequent or other default.

**11. Assignment.** Concessioner shall not assign, sublet or transfer its interest in this Agreement without the prior written consent of the City Council. Concessioner shall provide the City with a copy of any such proposed assignment or transfer of any of Concessioner's rights in this Agreement, which must include the name, address, and contact person of the assignee, along with the proposed date of assignment or transfer.

**12. Notice.** Notice required or permitted to be given in connection with this Agreement must be in writing. Notice may be given by hand delivery or certified mail, postage prepaid, to the recipient at the address for notice set forth below or at the last address for notice that the sender has for the recipient at the time notice is given. If properly addressed and sent certified mail or hand-delivered as provided herein, such notice will be deemed received on the day hand delivered, as evidenced by a written acknowledgment of receipt by the recipient, or on the third day after deposit in the U.S. mail, if sent certified mail, postage prepaid. Notice given in any other manner will be deemed delivered if and when actually received by the party specified below. Notice must be sent as follows:

**If to City:**

Attention:  
Christina McDonald  
City Secretary  
800 Third Street  
Marble Falls, Texas 78654  
Phone: 830-693-3615  
Fax: 830-693-6737

With additional notice to:  
Patty Akers  
City Attorney  
The Akers Law Firm  
13809 Research Blvd, Suite 250  
Austin, Texas 78750  
Phone: 512-600-2305

**If to Concessioner:**

Jane Dean  
402 Hi Stirrup, Unit D3  
Horseshoe Bay, TX 78657  
Phone: 512-698-3601

Either party may change its address for notice by providing the other party with a written notice of change of address for notice.

**13. Default.** If Concessioner fails to maintain the Licensed Property, comply with the requirements of Section 6, or otherwise comply with the terms or conditions herein, then the City Manager shall give Concessioner written notice as set out in Section 12 Notice. Concessioner will have thirty (30) days from the date of such notice to take action to remedy the failure complained of, or such lesser period if such is required under the terms of this Agreement, and, if Concessioner does not satisfactorily remedy the same within that thirty (30) day period, the City may remedy the default or contract to remedy the default.

**14. Compliance with Laws.** Concessioner covenants that all construction, installation, repair, maintenance, and removal of the Improvements permitted by this Agreement must be done in compliance with all applicable City, County, State and/or Federal laws, ordinances, regulations and policies now existing or later adopted.

**15. Interpretation.** Although drafted by the City, this Agreement must, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against either party.

**16. Application of Law.** This Agreement must be governed by the laws of the State of Texas. If the final judgment of a court of competent jurisdiction invalidates any part of this Agreement, then the remaining parts must be enforced, to the extent possible, consistent with the intent of the parties as evidenced by this Agreement.

**Terms and Conditions Accepted on January 19, 2016.**

**CITY: CITY OF MARBLE FALLS, TEXAS**

**By:** \_\_\_\_\_  
John Packer  
Mayor  
City of Marble Falls, Texas

**Date:** \_\_\_\_\_

**CONCESSIONER: JANE DEAN**

**By:** \_\_\_\_\_  
Jane Dean

**Date:** \_\_\_\_\_

**ATTEST:** \_\_\_\_\_  
Christina McDonald  
City Secretary  
City of Marble Falls, Texas

**Date:** \_\_\_\_\_



**January 19, 2016**

**6. CONSENT AGENDA**

- (c) Approval of a Park Concession Agreement between the City of Marble Falls and Raymond Weeks for the purpose of karate lessons at the Westside Park Community Hall. ***Robert Moss, Parks and Recreation Director***
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Background information is attached as follows:

[Cover Memo and Supporting Documentation](#)



**City of Marble Falls, Texas  
Council Agenda Item Cover Memo  
January 19, 2016**

**Agenda Item: 6(c)**

**Prepared By: Robert W. Moss, Parks and Recreation Director**

**Department: Parks and Recreation**

**Submitted By: Robert W. Moss, Parks and Recreation Director**

**AGENDA CAPTION**

Approval of a Park Concession Agreement between the City of Marble Falls ('City') and Raymond Weeks ('Concessioner') for the purpose of karate lessons at the Westside Park Community Hall.

**BACKGROUND**

Raymond Weeks wishes to use the Westside Park Community Hall primarily on Monday and Wednesday evenings from 4pm to 8pm (occasionally on other days based on availability) solely for the purpose of Karate Classes. This Agreement will be for a trial period of three (3) months. The Agreement may be renewed after the trial period for a full one-year term. The Park Concession Agreement specifies that 15% of the karate instruction fees will be paid to the City on a monthly basis.

**CONCESSION AGREEMENT BETWEEN  
THE CITY OF MARBLE FALLS, TEXAS  
AND RAYMOND WEEKS**

The **City of Marble Falls**, a duly incorporated Texas home-rule municipal corporation, ("City"), and Raymond Weeks ("Concessioner"), enter into this Concession Agreement ("Agreement") on January 19, 2016, upon the terms and conditions set forth below:

**1. Premises.** The City grants Concessioner the right to use the Westside Park Community Hall, ("Licensed Property").

The City makes this grant solely to the extent of its right, title and interest in the Licensed Property, without any express or implied warranties.

**2. Purpose.** The City grants Concessioner permission to use the Licensed Property primarily on Monday and Wednesday evenings (occasionally on other days based on availability) solely for the purpose of Karate Classes.

**3. Consideration.** Concessioner agrees to pay the City 15% of gross receipts for the term of this Agreement.

If the City causes damage to or destruction of Concessioner's Improvements or Property, Concessioner covenants not to sue the City, or pursue other remedies against the City to recover costs of repairing or replacing the Improvements or Property, as additional consideration for being granted this Agreement.

Payments collected and related documentation for all sales shall be due monthly. Concessioner will provide documentation to the City that describes the type and dates of sales originating from the Licensed Property on or before the 15<sup>th</sup> day of the month following the month the sales occurred. The City auditor, or duly authorized representative of the City, shall, for the purpose of audit and examination, have access to records and other books, documents, and papers of the Concessioner pertinent to the contract. The City may, upon reasonable notice to concessioner, conduct an audit of concessioner's records to verify that Concession Fees have been properly paid and that charges to the public by the Concessioner have been properly charged and received.

**4. Term.** This Agreement shall commence on the execution date and shall continue in full force and effect for a **trial** period ending April 30, 2016; provided that the Licensed Property is used solely for the purposes set out in Section 2 Purpose. This Agreement may be renewed by the City Council for additional terms.

**5. Limits on License.** The existence of this Agreement is expressly subordinate to the present and future right of the City to use this property in any manner authorized by law. This Agreement is also subordinate to any easements, utility easements, rights of way, use agreements, park reservation permits issued by the city staff, licenses or other property interests recorded and associated with the property.

The City may enter the Licensed Property without giving notice and without incurring any obligation to Concessioner and remove the Improvements or any alteration thereof. Such removal will occur only if the City Manager deems it is necessary: (a) in order to exercise the City's rights or duties with respect to the Licensed Property; (b) to protect persons or property; or (c) for the public health or safety with respect to the Licensed Property.

## **6. Conditions.**

**A. Use of the Licensed Property.** Concessioner shall use the Licensed Property solely for the purposes listed in Section 2 Purpose. Concessioner is responsible for cleaning the Licensed Property after each use; and, any damage noted after each use. It is Concession responsibility to report any damage to the Licensed Property noted upon entering and prior to use.

**B. Improvements or Alteration of Property.** Concessioner shall not construct or locate any other structures or improvements on the property without the prior written permission of the City Manager. Concessioner shall not remove or alter any improvement, soil or other material on the property without the prior written consent of the City Manager. Concessioner shall be responsible for repairs to the property or its improvements if damage is caused to such property or improvements. All improvements and/or alterations must comply with the city's current ordinances and regulations and must pass all applicable inspections.

**C. Remove or Modify Improvements.** If Concessioner is granted written authority to construct or locate a structure or improvement on the property, Concessioner may be required at its own cost to remove the structure or improvement, at the option of the City upon termination of this License, or prior to termination upon a determination by the City Manager that the structure or improvement needs to be removed or modified because the structure or improvement is a hazard to persons or property, that the structure or improvement prevents the City from using the property for a lawful purpose or because the structure or improvement does not comply with federal, state or local ordinances or this License. All improvements must meet the City's ordinances and be compliant with the Americans with Disabilities Act. All improvements and/or alterations must comply with the city's current ordinances and regulations and must pass all applicable inspections.

**D. Maintenance.** Concessioner shall maintain the Licensed Property by keeping the immediate area around the Improvements free of debris and litter on an ongoing basis. Further, Concessioner must timely and properly maintain the Improvements, if any.

**E. Activities.** Concessioner will not conduct any activities, events, or operate the Licensed Property in a manner that would violate any city ordinance or cause the City to be in violation of any federal, state or local laws, deed restrictions, covenants or easements in effect for the property.

**F. Signage.** Concessioner shall post and maintain a clearly readable sign, of a format, context, and material approved by the City, in a clearly visible location that shows the days/times of Licensed Property usage for purpose defined in Section 2.

**G. Insurance.** Concessioner shall be required to maintain in effect Comprehensive General Liability insurance covering claims for personal injury, death or damage to property to the limit of not less than one-million dollars (\$1,000,000.00) per occurrence.

**The city will be named as an additional insured** on such policy. A thirty (30) day notice of cancellation endorsement in favor of the City of Marble Falls must also be

provided. Required coverage may be provided in the form of a rider and/or endorsement to a previously existing insurance policy. The insurance must cover all perils arising from the activities of concessioner, its employees, agents, contractors, and invitees, related to concessioner's use of the park land or facilities covered in the concession.

Concessioner shall be responsible for the payment of any deductibles stated in the policy.

**H. Health Permits.** Concessioner shall be required to possess, in good standing, all necessary health permits required for prepared food service in the State of Texas.

**7. Indemnification.** To the extent permitted by applicable law, Concessioner hereby agrees to indemnify, save, and hold harmless the City of Marble Falls, its officers, employees, agents, and Concessioners (collectively called "Indemnitees") against any and all liability, damage, loss, claims, causes of action, expenses or demands (collectively "Costs") of any nature whatsoever, on account of personal injury (including without limitation, Workers' Compensation and death claims), or property loss or damage of any kind whatsoever, which arises, or is claimed to arise, out of or is, or is claimed to be, in any manner connected with, construction, installation, existence, operation, use, maintenance, repair, restoration, or removal of the Improvements on the Licensed Property pursuant to this License. Concessioner must, at its own expense, investigate all those claims and demands, attend to their settlement or other disposition, defend all actions based thereon using counsel satisfactory to Indemnitees' City Attorney, and pay all other Costs and expenses of any kind arising from any of the aforesaid claims, demands or causes of action.

**8. Termination.**

**A. Termination by Notice.** Either party may terminate this Agreement by delivering written notice of termination to the other party not later than thirty (30) days before the effective date of termination. In the event that the Concessioner is the terminating party, Concessioner shall deliver the required thirty (30) day notice of termination to the City Manager.

**B. Termination by Abandonment.** If Concessioner abandons or fails to comply with the terms of the Concession Agreement, and the ~~City Manager~~ receives no substantive response within thirty (30) days following written notification to concessioner, then the City (through action by the City Manager) may terminate the Concession Agreement and remove and/or replace any improvements, equipment or inventory at its option and located on City park land or within City facilities. All of Concessioner's improvements, equipment or inventory located on City park land or within City facilities after the date that a Concession Agreement expires or is terminated shall be deemed property of the City.

**C. Termination by Default.** In the event that Concessioner fails to make timely payments to the City or fails to comply with the terms and conditions of this Agreement, City may revoke Concessioner's License and terminate this Agreement.

**9. Venue.** Venue for all lawsuits concerning this Agreement must be in the State District Courts of Burnet County, Texas.

**10. Waiver of Default.** Either party may waive any default of the other at any time, without affecting or impairing any right arising from any subsequent or other default.

**11. Assignment.** Concessioner shall not assign, sublet or transfer its interest in this Agreement without the prior written consent of the City Council. Concessioner shall provide the City with a copy of any such proposed assignment or transfer of any of Concessioner's rights in this Agreement, which must include the name, address, and contact person of the assignee, along with the proposed date of assignment or transfer.

**12. Notice.** Notice required or permitted to be given in connection with this Agreement must be in writing. Notice may be given by hand delivery or certified mail, postage prepaid, to the recipient at the address for notice set forth below or at the last address for notice that the sender has for the recipient at the time notice is given. If properly addressed and sent certified mail or hand-delivered as provided herein, such notice will be deemed received on the day hand delivered, as evidenced by a written acknowledgment of receipt by the recipient, or on the third day after deposit in the U.S. mail, if sent certified mail, postage prepaid. Notice given in any other manner will be deemed delivered if and when actually received by the party specified below. Notice must be sent as follows:

**If to City:**

Attention:  
Christina McDonald  
City Secretary  
800 Third Street  
Marble Falls, Texas 78654  
Phone: 830-693-3615  
Fax: 830-693-6737

With additional notice to:  
Patty Akers  
City Attorney  
The Akers Law Firm  
13809 Research Blvd, Suite 250  
Austin, Texas 78750  
Phone: 512-600-2305

**If to Concessioner:**

Raymond Weeks  
PO Box 373  
Johnson City, TX 78636  
Phone: 512-689-3330

Either party may change its address for notice by providing the other party with a written notice of change of address for notice.

**13. Default.** If Concessioner fails to maintain the Licensed Property, comply with the requirements of Section 6, or otherwise comply with the terms or conditions herein, then the City Manager shall give Concessioner written notice as set out in Section 12 Notice. Concessioner

will have thirty (30) days from the date of such notice to take action to remedy the failure complained of, or such lesser period if such is required under the terms of this Agreement, and, if Concessioner does not satisfactorily remedy the same within that thirty (30) day period, the City may remedy the default or contract to remedy the default.

**14. Compliance with Laws.** Concessioner covenants that all construction, installation, repair, maintenance, and removal of the Improvements permitted by this Agreement must be done in compliance with all applicable City, County, State and/or Federal laws, ordinances, regulations and policies now existing or later adopted.

**15. Interpretation.** Although drafted by the City, this Agreement must, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against either party.

**16. Application of Law.** This Agreement must be governed by the laws of the State of Texas. If the final judgment of a court of competent jurisdiction invalidates any part of this Agreement, then the remaining parts must be enforced, to the extent possible, consistent with the intent of the parties as evidenced by this Agreement.

**Terms and Conditions Accepted on January 19, 2016.**

**CITY: CITY OF MARBLE FALLS, TEXAS**

**By:** \_\_\_\_\_  
John Packer  
Mayor  
City of Marble Falls, Texas

**Date:** \_\_\_\_\_

**CONCESSIONER: RAYMOND WEEKS**

**By:** \_\_\_\_\_  
Raymond Weeks

**Date:** \_\_\_\_\_

**ATTEST:** \_\_\_\_\_  
Christina McDonald  
City Secretary  
City of Marble Falls, Texas

**Date:** \_\_\_\_\_



**January 19, 2016**

**7. REGULAR AGENDA**

- (a) Discussion and Action on the Second Reading of Ordinance 2016-O-01A amending the Code of Ordinances of the City of Marble Falls Chapter 15 (Parks and Recreation), Article IV (Lakeside Pavilion), Section 15-86 (Definitions), Section 15-90 (License Fees), Section 15-91 (City's right to refuse rent), proposed Section 15-93.5 (No Smoking), and Section 15-97 (Pavilion Basic Services). ***Robert Moss, Parks and Recreation Director***

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Background information is attached as follows:

[Cover Memo and Supporting Documentation](#)



**City of Marble Falls, Texas  
Council Agenda Item Cover Memo  
January 19, 2016**

**Agenda Item: 7(a)**  
**Prepared By: Robert W. Moss**  
**Department: Parks and Recreation**  
**Submitted By: Robert W. Moss**

**AGENDA CAPTION**

Discussion and Action on the Second Reading of Ordinance 2016-O-01A amending the Code of Ordinances of the City of Marble Falls Chapter 15 (Parks and Recreation), Article IV (Lakeside Pavilion), Section 15-86 (Definitions), Section 15-90 (License Fees), Section 15-91 (City's right to refuse rent), proposed Section 15-93.5 (No Smoking), and Section 15-97 (Pavilion Basic Services).

**BACKGROUND**

At the November 2015 Parks and Recreation Commission (Commission) Meeting, the Commission recommended changes to fees for the Lakeside Pavilion. This recommendation is based on comparison to other like facilities in Luling, Burnet, Llano, Round Rock, Round Mountain, Kyle, and New Braunfels – see attachment. There were many other private facilities priced much higher; however, we used civic facilities for our comparisons.

Therefore, the Parks and Recreation Commission and staff are recommending the following changes to the following sections of Chapter 15 of the City of Marble Falls Code of Ordinances to accommodate the new Lakeside Pavilion license fees and other rule changes(underlined and in blue):

Sec. 15-86 (Definitions)

*Group I. Public agencies & Non-profits:* Federal, state, county and city agencies; 501(c)(3) and 501(c)(6) non-profit organizations; and co-sponsored city athletic leagues. Group I rates applicable Sunday through Thursday only (Group II rates apply Friday and Saturday). Co-sponsored city athletic leagues will not be charged for board meetings as provided for in the City of Marble Falls Facility Use Agreement.

*Group II. Individuals, Civic organizations, and social groups:* Any person or group who wishes to use the property for other than commercial purposes. These include but are

not limited to: Fraternities, sororities, lodges, social clubs, family reunions, wedding receptions and banquets.

Sec. 15-90 (License fees)

	<b>Group I</b>	<b>Group II</b>	<b>Group III</b>
<b><u>Pavilion use fee</u></b>	<b><u>200.00</u></b>	<b><u>1,500.00 (Sun-Fri)</u></b> <b><u>2,000.00 (Saturday)</u></b>	<b><u>1,800.00</u></b>
<b>Cleaning fee</b>	<b>350.00</b>	<b>350.00</b>	<b>350.00</b>
<b>Facility deposit</b>	<b>250.00</b>	<b>250.00</b>	<b>250.00</b>

Note: Residents (must live inside the corporate city limits of Marble Falls and named as licensee) shall receive a five hundred dollar (\$500.00) discount on the license fee. Resident discount is not applicable to rate classification Groups I and III.

Sec. 15-93.5 (No Smoking)

The Lakeside Pavilion is a non-smoking facility. Smoking is permitted in areas outside of the building only.

Sec. 15-97 (Pavilion basic services)

(a) The pavilion's basic license includes the following services:

(1) All Utilities.

(2) Heat and/or air conditioning.

(3) Tables and chairs.

(4) PA system with wired and wireless microphones, audio/video system, and podium. The audio/video equipment has limited capacity and capability; and may not be suitable for all uses.

(5) Restrooms.

(6) Commercial kitchen.

(7) Facility cleaning service.

(8) Wireless Internet.

(b) Failure to furnish any of the services as noted in subsection (a) above resulting from circumstances beyond the control of the city; or limitations of certain services, will not be considered a breach of contract by the city.

Following, is an example for each rate category showing how the fee changes will affect cost (current vs. new):

**Group I** rate category event - with alcohol:

<b>Fee</b>	<b>Current</b>	<b>New</b>
Use Fee	\$100 (Sun – Thurs)	\$200 (Sun-Thurs)
Facility Security Deposit	\$500	\$500
Cleaning Fee	\$350	\$350
<b>Total (time of reservation)</b>	<b>\$950</b>	<b>\$1,050</b>
Refund (after event)	(\$500)	(\$500)
<b>Net Cost</b>	<b>\$450</b>	<b>\$550</b>

**Group II** rate category event - with alcohol:

<b>Fee</b>	<b>Current</b>	<b>New</b>
Use Fee	\$500	\$1,500 (Sun-Fri) \$2,000 (Saturday)
Facility Security Deposit	\$500	\$500
Cleaning Fee	\$350	\$350
<b>Total (time of reservation)</b>	<b>\$1,350</b>	<b>\$2,350 (Sun-Fri)</b> <b>\$2,850 (Saturday)</b>
Refund (after event)	(\$500)	(\$500)
<b>Net Cost</b>	<b>\$850</b>	<b>\$1,850 (Sun-Fri)</b> <b>\$2,350 (Saturday)</b>

**Group III** rate category event - with alcohol:

<b>Fee</b>	<b>Current</b>	<b>New</b>
Use Fee	\$600	\$1,800
Facility Security Deposit	\$500	\$500
Cleaning Fee	\$350	\$350
<b>Total (time of reservation)</b>	<b>\$1,450</b>	<b>\$2,650</b>
Refund (after event)	(\$500)	(\$500)
<b>Net Cost</b>	<b>\$950</b>	<b>\$2,150</b>

**NOTE:** The resident discount for Group II rates will be increased from \$100 to \$500.

[Venue Comparison](#)

## **ORDINANCE 2016-O-01A**

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF MARBLE FALLS, TEXAS, CHAPTER 15 (PARKS AND RECREATION), ARTICLE IV (LAKESIDE PAVILION), SECTION 15-86 (DEFINITIONS), SECTION 15-90 (LICENSE FEES), SECTION 15-91 (CITY'S RIGHT TO REFUSE RENT), SECTION 15-93.5 (NO SMOKING), AND SECTION 15-97 (PAVILION BASIC SERVICES); PROVIDING FOR A SAVINGS CLAUSE, SEVERABILITY, REPEALER, EFFECTIVE DATE AND PROPER NOTICE AND MEETING.

WHEREAS, updates to general information are necessary to ensure complete and accurate information;

WHEREAS, the City Council of the City of Marble Falls is of the opinion that a 501(c)(6) non-profit organizations should be established as part of the Group I rate classification; and related Group I rental rates shall be adjusted to accommodate the addition of 501(c)(6) organizations;

WHEREAS, it is the opinion of the City Council of the City of Marble Falls, Texas that rental rates for use of the Lakeside Pavilion need to be increased to accommodate the change in rental configuration and amenities;

WHEREAS, the new rental charges are set by the City Council in an effort to recoup the City's actual costs in providing for the use of the Lakeside Pavilion by those who would rent it; and

WHEREAS, the City Council of the City of Marble Falls, Texas is of the opinion that the amendments are in the public's best interest;

NOW, THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MARBLE FALLS, TEXAS THAT:

### **I. FINDINGS OF FACT**

All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council, and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

### **II. RENTAL REGULATIONS**

Chapter 15, Article IV, section 15-86 "Definitions" is hereby amended by repealing the current definition of "Group I. Public agencies" and replacing it in its entirety with the following:

\* \* \*

*Group I. Public agencies & Non-profits:* Federal, state, county and city agencies; 501(c)(3) and 501(c)(6) non-profit organizations; and co-sponsored city athletic leagues. Group I rates applicable Sunday through Thursday only. Co-sponsored city athletic leagues will not be charged for board meetings as provided for in the City of Marble Falls Facility Use Agreement.

\* \* \*

Chapter 15, Article IV, section 15-86 “Definitions” is hereby amended by repealing the current definition of “Group II. Civic organizations and social groups” and replacing it in its entirety with the following:

\* \* \*

*Group II. Individuals, Civic organizations, and social groups:* Any person or group who wishes to use the property for other than commercial purposes. These include but are not limited to: Fraternities, sororities, lodges, social clubs, family reunions, wedding receptions and banquets.

\* \* \*

Chapter 15, Article IV, section 15-90 “License Fees” is hereby amended by repealing the section in its entirety and replacing it with the following:

\* \* \*

15-90 License Fees

(a) License fees per day for use of the Lakeside Pavilion are:

**TABLE INSET:**

	<b>Group I</b>	<b>Group II</b>	<b>Group III</b>
Pavilion use fee	\$200.00	\$1,500.00 (Mon – Fri) \$2,000 (Saturday)	\$1,800.00
Cleaning fee	\$350.00	\$350.00	\$350.00
Facility deposit	\$250.00	\$250.00	\$250.00

Note: The facility deposit shall be \$500.00 for Groups I, II and III if alcohol is consumed on the premises.

Alcohol sales permit fee . . . \$100.00

Alcohol consumption permit fee (reference Ordinance Number 94-0-4) . . . \$25.00

Note: Residents (must live inside the corporate city limits of Marble Falls and named as licensee) shall receive a five hundred dollar (\$500.00) discount on the license fee. Resident discount is not applicable to rate classification Groups I and III.

(b) License fee and facility deposit are required at the time of reservation confirmation.

- (c) Keys will be issued one (1) day prior to scheduled event. Keys must be returned no later than the next working day after scheduled event. Anyone not returning the key after one (1) working day has passed shall forfeit the facility deposit.
- (d) Facility deposit will be refunded after return of keys and Facility Deposit Refund Checklist, and, inspection of the Lakeside Pavilion; provided, however, that the use or consumption of alcohol without having obtained a permit from the parks and recreation department and without having paid all required alcohol sales permit fees, and alcohol and consumption fees shall result in a forfeiture of the facility deposit.
- (e) Any damage to the Pavilion in excess of the security deposit shall be billed to licensee.
- (f) Early access will be permitted to the Pavilion and grounds prior to rental time only if such access will not conflict with any other event or licensee.
- (g) A reservation for the use of the Pavilion for three (3) consecutive weekend days (i.e. Friday, Saturday, and Sunday) that is paid in full shall entitle the licensee to the use of the Pavilion for two (2) weekdays at no additional license fee. The weekdays must be consecutive with the weekend use.
- (h) All personal property must be removed at the end of the event.

\* \* \*

Chapter 15, Article IV is hereby amended by repealing item “2” of section 15-91 “City’s right to refuse rent” in its entirety and replacing it with the following:

\* \* \*

- (2) The applicant has not tendered the required license fee with the application or has not rendered the required user fee, indemnification agreement, insurance certificate or facility deposit within the times prescribed.

\* \* \*

Chapter 15, Article IV is hereby amended by adding section 15-93.5 “No Smoking” in its entirety with the following:

\* \* \*

### 15-93.5 No Smoking

The Lakeside Pavilion is a non-smoking facility. Smoking is permitted in areas outside of the building only.

\* \* \*

Chapter 15, Article IV, section 15-97 “Pavilion Basic Services” is hereby amended by repealing the section in its entirety and replacing it with the following:

\* \* \*

### 15-97 Pavilion Basic Services

- (a) The Pavilion's basic license includes the following services:
- (1) All Utilities.
  - (2) Heat and/or air conditioning.
  - (3) Tables and chairs.
  - (4) PA system with wired and wireless microphones, audio/video system, and podium. The audio/video equipment has limited capacity and capability; and may not be suitable for all uses.
  - (5) Restrooms.
  - (6) Commercial kitchen.
  - (7) Facility cleaning service.
  - (8) Wireless Internet.
- (b) Failure to furnish any of the services as noted in subsection (a) above resulting from circumstances beyond the control of the city; or limitations of certain services, will not be considered a breach of contract by the city.

\* \* \*

## **III. SEVERABILITY**

If any provision, section, sentence, clause or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void, invalid, or unenforceable, the validity of the remaining portions of this Ordinance or its application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council of the City of Marble Falls in adopting, and of the Mayor in approving this Ordinance, that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any portion, provision or regulation.

## **IV. REPEALER**

All ordinances and parts of ordinances that are in conflict with this ordinance are hereby repealed.

## **V. PENALTY**



A violation of any section of this ordinance shall be punishable as a misdemeanor under the provisions stated in Chapter 1, Section 1-9 of the Code of Ordinances of the City of Marble Falls.

## **VI. EFFECTIVE DATE**

This Ordinance shall be and become effective immediately upon and after its passage and publication as may be required by governing law.

## **VII. PROPER NOTICE AND MEETING**

It is hereby officially found and determined that the meeting at which this Ordinance was adopted was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

PUBLIC HEARING AND FIRST READING OF ORDINANCE – January 5, 2016.

SECOND READING OF THIS ORDINANCE – January 19, 2016.

**ADOPTED AND APPROVED** on this 19th day of January, 2016 by a vote of the City Council of the City of Marble Falls, Texas.

**CITY OF MARBLE FALLS, TEXAS**

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**John Packer, Mayor**

ATTEST:

APPROVED AS TO FORM:

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Christina McDonald, TRMC, City Secretary

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Patty Akers, City Attorney

**TX Hill Country Comparable Lakeside Pavilion / Wedding Venue Breakdown**

	<b>Luling</b>	<b>Burnet</b>	<b>Llano</b>	<b>Round Rock</b>
Weekday Use Fee	\$500	\$1,000	\$750 per day	\$750 for 4 hours / \$1,500 per day
Weekend / Holiday Use Fee	\$2,000	Same	Same	Same
Cleaning Fee	\$150	Self-Clean	Self-Clean	\$300
Facility Deposit	\$1,000	\$1000 to \$2,000	\$500	\$500
Alcohol Allowed	Yes	Yes	Yes	Yes
Security Required	Yes	Yes	Yes	No
Kitchen	Yes	Yes	No	Caterer's Kitchen
	<b>Round Mountain</b>	<b>Kyle</b>	<b>New Braunfels</b>	
Weekday Use Fee	Upon Request	\$1,950	\$1,200	
Weekend / Holiday Use Fee	\$2,000 to \$4,000	\$3,150 to \$4,450	\$1,600 to \$2,200	
Cleaning Fee	Included	Included	Included / \$100 per hour if excessive	
Facility Deposit	\$500	\$500	\$500	
Alcohol Allowed	Yes	Yes	Yes	
Security Required	Yes	Yes	Yes	
Kitchen	N/A	Yes	Yes	
Use Fee Range	\$750 to \$4,450			
Deposit Range	\$500 to \$2,000			
Use Fee Average	\$2,271			
Deposit Average	\$785			

\*\*\*Meadowlakes Country Club is now a city ran venue; however, their venue rental is based on a per person rate (i.e. Their pricing ranges from \$5 to \$25 per person depending on the event).

**January 19, 2016**

**7. REGULAR AGENDA**

- (b) Discussion and Action regarding the contract award for the Avenue N Realignment Project. ***Eric Belaj, City Engineer***
- 

Background information is attached as follows:

[Cover Memo and Supporting Documentation](#)



## Council Agenda Item Cover Memo December 1, 2015

**Agenda Item No.:** 7(b)  
**Presenter:** Eric Belaj, PE, CFM  
**Department:** Administration  
**Legal Review:** ☐

### AGENDA CAPTION

Discussion and Action regarding recommendation of contract award for the Avenue N realignment.

### BACKGROUND INFORMATION

The City recently received three bids for the Ave. N Realignment Project. The bids were opened Thursday, January 12, 2016, at 10 A.M. The proposed improvements up for bid were for realigning Ave. N to terminate at the intersection of Bluebonnet and 1431.

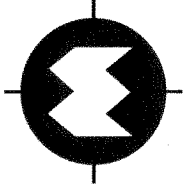
Proposed construction consists of constructing 800 feet long by 31 feet wide roadway from Broadway to 1431. The new roadway will have a 5-foot sidewalk along the west side, curbs, asphalt pavement, striping, and will also include ramps and crosswalks.

Willis Engineering has reviewed and tabulated three (3) [bids](#) received, and has determined that Ross Construction is the low bidder on the project. One local contractor's bid was within 3% of the lowest bid received. Summary of the bid tab is as follows:

Aaron Concrete .....	\$1,089,941.00
Ross Construction.....	\$662,516.53
Nelson Lewis Inc. ....	\$676,623.00

Ross Construction has included a valid bid bond as required. Ross Construction has constructed many projects around the area, both private and public. The review of the tabulated bids indicates that Ross Construction used bid amounts that were both appropriate and competitive for the project. There was noted a minor mathematical error when tabulating the bids; low bidder's original bid was \$662,478.95. The bid sums were slightly lower than the Engineer's estimate.

Willis Engineering [recommends](#) that the contract, for construction of the Ave N Realignment be awarded to the low bidder, Ross Construction for the contractual amount of \$662,516.53.



*Willis Environmental Engineering, Inc.*

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310 main • marble falls, texas • 78654  
(830) 693-3566 • fax (830) 693-5362  
email: [tplumlee@willis-engineering.com](mailto:tplumlee@willis-engineering.com)  
Reg. No. F-2782

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Mike Hodge  
City Manager  
City of Marble Falls  
800 3<sup>rd</sup> Street  
Marble Falls, Texas 78654

Date: January 11, 2016

Re: STREET, UTILITY AND DRAINAGE CONST.  
AVENUE 'N' STREET IMPROVEMENTS  
CIPTR-20150810A

Dear Mr. Hodge,

It is my recommendation to Award the STREET, UTILITY AND DRAINAGE CONSTRUCTION AVENUE 'N' STREET IMPROVEMENTS CIPTR-20150810A bid on January 7<sup>th</sup> at 10:00 at the City Council Chambers of the City of Marble Falls, Texas, to the Ross Construction Co., Inc.. They were the most responsive bid received at the bid opening. I have reviewed the contractor's bid and all is in proper order as well as checking the math on their bid Schedule of Values material. I have contacted some of their past clients and all gave them strong recommendations. I have personally worked with this company for over 20 years. It is therefore, my recommendation to award the STREET, UTILITY AND DRAINAGE CONSTRUCTION AVENUE 'N' STREET IMPROVEMENTS CIPTR-20150810A contract for the total sum of \$662,516.53 to the Ross Construction Co., Inc..

Respectfully Your

*William A Plumlee P.E.*

William A Plumlee, P.E.



**Avenue N Realignment**  
**ENGINEERS ESTIMATE ROAD CONSTRUCTION COST / BID TABULATION**

				ENGINEERING ESTIMATE		AARON CONCRETE		ROSS CONSTRUCTION		NELSON LEWIS INC.	
NO.	ITEM	UNIT	QUANTITY	UNIT PRICE	TOTAL COST	UNIT PRICE	TOTAL COST	UNIT PRICE	TOTAL COST	UNIT PRICE	TOTAL COST
EROSION CONTROLS & MISC.											
1	Mobilization, Bonds & Insurance	LS	1	\$50,000.00	\$50,000	\$ 45,000.00	\$ 45,000.00	\$ 34,960.00	\$ 34,960.00	\$ 40,000.00	\$ 40,000.00
2	Silt Fence	LF	1,000	\$2.25	\$2,250	\$ 2.00	\$ 2,000.00	\$ 3.45	\$ 3,450.00	\$ 5.00	\$ 5,000.00
3	Erosion Control Maintenance	HRS	100	\$6.00	\$600	\$ 150.00	\$ 15,000.00	\$ 23.00	\$ 2,300.00	\$ 20.00	\$ 2,000.00
4	Curb Inlet Protection	LF	20	\$10.00	\$200	\$ 9.00	\$ 180.00	\$ 11.50	\$ 230.00	\$ 100.00	\$ 2,000.00
5	Topsoil (for R.O.W. within 10' of curb, 4" thick)	CY	200	\$20.00	\$4,000	\$ 20.00	\$ 4,000.00	\$ 23.00	\$ 4,600.00	\$ 20.00	\$ 4,000.00
6	Place and Grade Topsoil	SY	1,600	\$1.50	\$2,400	\$ 6.00	\$ 9,600.00	\$ 1.73	\$ 2,768.00	\$ 2.00	\$ 3,200.00
7	Revegetation - Common Bermuda Hydromulch	SY	1,600	\$1.50	\$2,400	\$ 0.60	\$ 960.00	\$ 1.15	\$ 1,840.00	\$ 2.00	\$ 3,200.00
8	MUTCD Traffic Control Plan	MONTHLY	6	\$1,400.00	\$8,400	\$ 1,400.00	\$ 8,400.00	\$ 1,686.67	\$ 10,120.02	\$ 1,300.00	\$ 7,800.00
9	Stabilize Construction Entrance	EA	2	\$1,250.00	\$2,500	\$ 1,800.00	\$ 3,600.00	\$ 1,380.00	\$ 2,760.00	\$ 1,200.00	\$ 2,400.00
DEMOLITION											
10	Demolish & Remove Existing Road	SY	630	\$6.50	\$4,095	\$ 15.00	\$ 9,450.00	\$ 5.75	\$ 3,622.50	\$ 8.00	\$ 5,040.00
11	Demolish & Remove Existing Sidewalk at Broadway along Avenue "N" to HWY 1431	LF	775	\$5.00	\$3,875	\$ 25.00	\$ 19,375.00	\$ 11.50	\$ 8,912.50	\$ 12.00	\$ 9,300.00
12	Demolish & Remove Existing Curb & Gutter	LF	1,620	\$7.00	\$11,340	\$ 10.00	\$ 16,200.00	\$ 3.45	\$ 5,589.00	\$ 6.00	\$ 9,720.00
13	Demolish & Lower Existing 12" Water Line along HWY 1431 and Intersection of New Avenue "N"	LF	100	\$100.00	\$10,000	\$ 70.00	\$ 7,000.00	\$ 11.50	\$ 1,150.00	\$ 35.00	\$ 3,500.00
14	Demolish & Remove Existing Concrete Driveway into Taco Casa off of HWY 1431	SY	95	\$72.00	\$6,840	\$ 55.00	\$ 5,225.00	\$ 28.75	\$ 2,731.25	\$ 40.00	\$ 3,800.00
15	Demolish & Remove Existing Sidewalk along HWY 1431	LF	250	\$8.50	\$2,125	\$ 10.00	\$ 2,500.00	\$ 5.75	\$ 1,437.50	\$ 8.00	\$ 2,000.00
16	Tree Removal and Grubbing out rootball	LS	1	\$1,500.00	\$1,500	\$ 25,000.00	\$ 25,000.00	\$ 5,750.00	\$ 5,750.00	\$ 800.00	\$ 800.00
STREET IMPROVEMENTS											
17	Street Excavation	CY	3,300	\$8.50	\$28,050	\$ 45.00	\$ 148,500.00	\$ 19.97	\$ 65,901.00	\$ 8.00	\$ 26,400.00
18	Place and Compaction of Embankment (Fill)	CY	370	\$50.00	\$18,500	\$ 20.00	\$ 7,400.00	\$ 11.50	\$ 4,255.00	\$ 7.00	\$ 2,590.00
19	12" Depth of Full-Depth Reclamation and 4% Cement Stabilized Sub-grade	SY	4,100	\$9.50	\$38,950	\$ 15.00	\$ 61,500.00	\$ 10.40	\$ 42,640.00	\$ 14.00	\$ 57,400.00
20	Subgrade Compaction	SY	4,100	\$2.80	\$11,480	\$ 4.00	\$ 16,400.00	\$ 2.30	\$ 9,430.00	\$ 6.00	\$ 24,600.00
21	Tenstar Triax Tx 140 Geogrid Roll or Equivalent 13.1' Wide by 246' Long	EA	25	\$1,130.00	\$28,250	\$ 600.00	\$ 15,000.00	\$ 617.55	\$ 15,438.75	\$ 250.00	\$ 6,250.00
22	Place and Install Tenstar Triax Tx 140 Geogrid Roll or Equivalent	SY	8,200	\$5.60	\$45,920	\$ 1.00	\$ 8,200.00	\$ 1.15	\$ 9,430.00	\$ 0.75	\$ 6,150.00
23	20" Thick Road Base (Crushed Limestone)	SY	4,100	\$22.00	\$90,200	\$ 45.00	\$ 184,500.00	\$ 25.58	\$ 104,878.00	\$ 17.00	\$ 69,700.00
24	2 ½" HMAC Asphalt Pavement	SY	2,550	\$13.50	\$34,425	\$ 18.00	\$ 45,900.00	\$ 16.84	\$ 42,942.00	\$ 17.00	\$ 43,350.00
25	24" Standard Curb & Gutter	LF	1,977	\$18.00	\$35,586	\$ 18.00	\$ 35,586.00	\$ 13.80	\$ 27,282.60	\$ 19.00	\$ 37,563.00
26	5' Wide Concrete Sidewalk	LF	910	\$30.00	\$27,300	\$ 37.00	\$ 33,670.00	\$ 23.00	\$ 20,930.00	\$ 40.00	\$ 36,400.00
27	Sidewalk Pedestrian Ramp	EA	10	\$700.00	\$7,000	\$ 1,500.00	\$ 15,000.00	\$ 879.75	\$ 8,797.50	\$ 1,500.00	\$ 15,000.00
28	3" Electrical Conduit for Proposed Street Light Add on	LF	180	\$28.00	\$5,040	\$ 28.00	\$ 5,040.00	\$ 28.75	\$ 5,175.00	\$ 9.00	\$ 1,620.00
29	Concrete Tie-In at Avenue "N" / HWY 1431	SF	1,400	\$12.00	\$16,800	\$ 9.00	\$ 12,600.00	\$ 5.75	\$ 8,050.00	\$ 13.00	\$ 18,200.00
30	Gibraltar Cable Barrier System	LF	300	\$15.00	\$4,500	\$ 34.00	\$ 10,200.00	\$ 22.43	\$ 6,729.00	\$ 60.00	\$ 18,000.00
31	End Anchor Terminal for Cable System	EA	2	\$1,200.00	\$2,400	\$ 5,600.00	\$ 11,200.00	\$ 3,953.13	\$ 7,906.26	\$ 2,000.00	\$ 4,000.00
32	Rock Gabion Basket Retaining Wall System	CY	270	\$250.00	\$67,500	\$ 215.00	\$ 58,050.00	\$ 228.16	\$ 61,603.20	\$ 300.00	\$ 81,000.00
33	6" Concrete Retaining Wall (Height Varies)	LF	195	\$126.00	\$24,570	\$ 245.00	\$ 47,775.00	\$ 74.75	\$ 14,576.25	\$ 120.00	\$ 23,400.00
34	Taco Casa Driveway Ribbon Curb	LF	200	\$15.00	\$3,000	\$ 24.00	\$ 4,800.00	\$ 13.80	\$ 2,760.00	\$ 16.00	\$ 3,200.00
35	Taco Casa Driveway 6" Flexible Road Base	SY	290	\$13.00	\$3,770	\$ 11.00	\$ 3,190.00	\$ 6.07	\$ 1,760.30	\$ 10.00	\$ 2,900.00
36	Taco Casa Driveway 2" Asphalt Pavement	SY	220	\$12.00	\$2,640	\$ 15.00	\$ 3,300.00	\$ 16.04	\$ 3,528.80	\$ 16.00	\$ 3,520.00
37	Storms Drive-In Driveway Ribbon Curb	LF	190	\$15.00	\$2,850	\$ 25.00	\$ 4,750.00	\$ 13.80	\$ 2,622.00	\$ 16.00	\$ 3,040.00
38	Storms Drive-In Driveway 6" Flexible Road Base	SY	290	\$13.00	\$3,770	\$ 11.00	\$ 3,190.00	\$ 6.07	\$ 1,760.30	\$ 10.00	\$ 2,900.00
39	Storms Drive-In Driveway 2" Asphalt Pavement	SY	220	\$12.00	\$2,640	\$ 15.00	\$ 3,300.00	\$ 16.04	\$ 3,528.80	\$ 16.00	\$ 3,520.00
40	Construction Staking	LF	1,110	\$5.75	\$6,383	\$ 40.00	\$ 44,400.00	\$ 5.75	\$ 6,382.50	\$ 6.00	\$ 6,660.00
WATER LINE IMPROVEMENTS											
41	12" Dr 18 C900 PVC Water Line	LF	100	\$125.00	\$12,500	\$ 95.00	\$ 9,500.00	\$ 115.00	\$ 11,500.00	\$ 100.00	\$ 10,000.00
42	12" 45° Bend	EA	4	\$0.00	\$0	\$ 1,800.00	\$ 7,200.00	\$ 862.50	\$ 3,450.00	\$ 1,200.00	\$ 4,800.00
43	Pressure Testing	LS	1	\$0.00	\$0	\$ 2,600.00	\$ 2,600.00	\$ 575.00	\$ 575.00	\$ 500.00	\$ 500.00
44	Pipe Disinfection	LS	1	\$0.00	\$0	\$ 4,300.00	\$ 4,300.00	\$ 287.50	\$ 287.50	\$ 100.00	\$ 100.00
45	Bacteriological Samples	LS	1	\$0.00	\$0	\$ 1,100.00	\$ 1,100.00	\$ 287.50	\$ 287.50	\$ 800.00	\$ 800.00
46	Trench Safety	LF	100	\$0.00	\$0	\$ 27.00	\$ 2,700.00	\$ 1.15	\$ 115.00	\$ 3.00	\$ 300.00
DRAINAGE IMPROVEMENTS											
47	19" Class III RCP	LF	150	\$48.00	\$7,200	\$ 76.00	\$ 11,400.00	\$ 86.25	\$ 12,937.50	\$ 110.00	\$ 16,500.00
48	5' Precast Curb Inlet	EA	2	\$1,800.00	\$3,600	\$ 4,000.00	\$ 8,000.00	\$ 2,875.00	\$ 5,750.00	\$ 4,300.00	\$ 8,600.00
49	Concrete Headwall with Concrete Energy Dissipaters	EA	2	\$4,800.00	\$9,600	\$ 8,000.00	\$ 16,000.00	\$ 2,875.00	\$ 5,750.00	\$ 3,000.00	\$ 6,000.00
50	Concrete Encasement of Water Line at Avenue "N" and HWY 1431 Intersection Crossing	EA	40	\$25.00	\$1,000	\$ 60.00	\$ 2,400.00	\$ 57.50	\$ 2,300.00	\$ 25.00	\$ 1,000.00
51	French Drain along Avenue "N" Street	LF	790	\$15.00	\$11,850	\$ 80.00	\$ 63,200.00	\$ 57.50	\$ 45,425.00	\$ 30.00	\$ 23,700.00
52	Trench Safety	LF	140	\$1.50	\$210	\$ 20.00	\$ 2,800.00	\$ 1.15	\$ 161.00	\$ 5.00	\$ 700.00
53	2' x 2' Box Inlet with Grate	EA	1	\$2,200.00	\$2,200	\$ 1,800.00	\$ 1,800.00	\$ 3,450.00	\$ 3,450.00	\$ 2,500.00	\$ 2,500.00

<b>TOTAL ESTIMATED COST</b>		<b>\$672,209</b>	<b>TOTAL COST</b>	<b>\$ 1,089,941.00</b>	<b>TOTAL COST</b>	<b>\$ 662,516.53</b>	<b>TOTAL COST</b>	<b>\$ 676,623.00</b>
<b>BID TOTAL</b>		<b>\$1,089,941.00</b>	<b>BID TOTAL</b>	<b>\$662,478.95</b>	<b>BID TOTAL</b>	<b>\$676,623.00</b>		
<b>DIFFERENCE</b>		<b>0</b>	<b>DIFFERENCE</b>	<b>\$37.58</b>	<b>DIFFERENCE</b>	<b>0</b>		





**City of Marble Falls, Texas  
Council Agenda Item Cover Memo  
January 19, 2016**

**Agenda Item: Executive Session**  
**Prepared By: Christina McDonald, City Secretary**  
**Department: Administration**  
**Submitted By: Christina McDonald, City Secretary**

**AGENDA CAPTION**

**EXECUTIVE SESSION**

CLOSE OPEN SESSION AND CONVENE EXECUTIVE SESSION Pursuant to §551.071 (*Private Consultation between the Council and its Attorney*), Pursuant to §551.072 (*Deliberation Regarding the Purchase, Exchange, Lease or Value of Real Property*) and Pursuant to §551.087 (*Deliberation Regarding Economic Development Negotiations*) of the Open Meetings Act. *Tex. Gov't Code*, Council will meet in Executive Session to discuss the following:

- Discuss economic development projects associated with development of EDC owned and City owned property, including public right-of-way and easements.

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**CERTIFICATION:**

I hereby certify that I have reviewed the proposed topic for the Executive Session described herein and in my opinion, the Texas Open Meetings Act authorizes the Marble Falls City Council to meet in Executive Session and to deliberate regarding the subject matter contained in this cover memo.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

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City Attorney